

	)	
ASSOCIATION FOR MOLECULAR PATHOLOGY,	)	09 Civ. 4515 (RWS)
<i>ET AL.</i> ,	)	
	)	ECF
Plaintiffs,	)	
v.	)	
	)	
UNITED STATES PATENT AND TRADEMARK	)	
OFFICE, <i>ET AL.</i> ,	)	
	)	
Defendants.	)	
	)	

Proposed *Amicus Curiae* Boston Patent Law Association (“BPLA”) submits this Memorandum of Law in support of its motion for leave to file an *amicus curiae* brief to assist the Court with the complex and significant issues raised by this case.<sup>1</sup>

The BPLA is a nonprofit association, approximately 900 members strong, of attorneys and other intellectual property professionals. The BPLA provides educational programs and forums for the exchange of ideas and information concerning patent, trademark, copyright, and other intellectual property rights. The BPLA's members serve a broad range of clients who rely on the patent system: independent inventors, businesses large and small, investors, and non-profit and academic institutions, such as universities and research hospitals. These clients

ME1 9455152v.1

operate in an equally broad range of industries, including life sciences, high-tech, consumer goods, and traditional manufacturing.

The BPLA has a substantial interest in this case. Plaintiffs' unprecedented challenges to the patent-eligibility of isolated molecules and gene-related inventions are of a tremendous concern to the BPLA and its members. Plaintiffs seek to eliminate the ability of the U.S. patent system to fulfill its constitutional role of promoting the progress of science and the useful arts. Not only do patents promote innovation, competition, and the wider availability of new technologies, they are also a key factor in economic growth and prosperity. Therefore, upholding the patent-eligibility of the inventions at issue here is necessary to ensure that BPLA members, their clients, and the scientific community at large can continue to further scientific research and develop innovative products, particularly in the life sciences field. Without strong patent protection, innovation in this field and others will decline significantly, to the detriment of the American economy and the public health and welfare.

BPLA has sought, and received, the consent of the parties in this case to the filing of an *amicus curiae* brief.

## II. ARGUMENT

District courts have broad discretion in deciding whether to accept an *amicus curiae* brief. *City of N.Y. v. United States*, 971 F. Supp. 789, 791 n.3 (S.D.N.Y. 1997), *aff'd*, 179 F.3d 29 (2d Cir. 1999); *Strougo v. Scudder, Stevens & Clark, Inc.*, No. 96-cv-2136, 1997 U.S. Dist. LEXIS 12243, at \*7- (S.D.N.Y. 1997); *United States v. Ahmed*, 788 F. Supp. 106, 198 n.1 (S.D.N.Y. 1992). Indeed, this Court has recognized that participation by *amicus curiae* is useful in situations in which “participation will not prejudice any party and may be of assistance to the court.” *Strougo*, 1997 U.S. Dist. LEXIS 12243, at \*7-8.

The BPLA has received the consent of all of the parties to this action to submit this motion for leave to file an *amicus curiae* brief. Therefore, there is no prejudice to the parties arising from the BPLA's participation in this case.

Moreover, the arguments asserted by the BPLA in its proposed *amicus curiae* brief serve to illuminate the legal issues in dispute. *Id.* at \*8 (granting *amicus curiae* leave to participate because "the policy arguments advanced by the [*amicus curiae*] may illuminate the legal issues presented by this motion"). This case involves fundamental questions regarding the scope of U.S. patent law. A decision upending long-standing expectations regarding the patent-eligibility of isolated substances will have far-reaching health and economic implications. Patents promote innovation, creativity, and competition. They also are a significant factor in economic growth and prosperity. Without the incentives of the patent system, the introduction and commercial availability of new and better treatments and diagnostics for cancer and other diseases will decline, to the detriment of the American economy and the public health and welfare.

Given the complexity of the legal issues surrounding this case, as well as the underlying technical and policy issues, BPLA submits that it is appropriate for this Court to exercise its discretion in allowing the filing of the proposed brief *amicus curiae* submitted herewith. The BPLA's proposed *amicus curiae* brief supplies the Court with the requisite technical and policy background to understand how the changes to the U.S. patent system proposed by Plaintiffs will adversely impact both the public health and welfare and the American economy.

### III. CONCLUSION

For the foregoing reasons, BPLA respectfully requests that this Court grant its Motion for Leave to File the proposed *amicus curiae* brief submitted herewith.

Dated: January 13, 2010

McCARTER & ENGLISH, LLP

*Of Counsel:*

Erik Paul Belt

Co-Chair, BPLA *Amicus* Committee

Maria Laccotripe Zacharakis, Ph.D.

McCarter & English, LLP

265 Franklin Street

Boston, MA 02116

(617) 449-6500

ebelt@mccarter.com

mzacharakis@mccarter.com

By: /s/Lee Carl Bromberg

Lee Carl Bromberg

Lori J. Shyavitz

Attorneys for *Amicus Curiae*

Boston Patent Law Association

265 Franklin Street

Boston, MA 02116

(617) 449-6500

lbromberg@mccarter.com

lshyavitz@mccarter.com

**CERTIFICATE OF SERVICE**

This is to certify that on January 13, 2010, a true and correct copy of the foregoing Memorandum of Law in Support of Boston Patent Law Association's Motion to File *Amicus Curiae* Brief has been served on registered counsel of record via the Court's ECF system.

Dated: January 13, 2010

/s/Lori J. Shyavitz  
Lori J. Shyavitz